

REMARKS

Remark 1:

Applicant respectfully requests Examiner withdraw the Encyclopedia Britannica Online reference as an obviating prior art reference. With all due respect, Applicant hereby submits that while it has considered in its entirety the Encyclopedia Britannica Online reference, Applicant finds that the reference is completely unrelated and irrelevant to the examination of the present case. Albeit ostensibly presenting with a apparently accurate academic expose behind the generally well known and accepted, basic and elementary theorem of thermodynamics regarding the three modes of heat transfer, namely conduction, convection and radiation, the literary reference goes no further in being of any particular relevance to the specific application of the present invention. Notably, within the four corners of the document there is not a single reference, suggestion or teaching that any single or combination method of heat transfer can be useful in any way in the delivery of insecticides. Further, the reference is utterly mute to the notion of regulated heat transfer between a heating device and a container of volatile insecticidal material. With all due respect, for the reasons given above, aside from presenting a general, theoretical and blasé background discussion regarding heat transfer, the Encyclopedia Britannica Online reference simply cannot stand or be considered a proper reference for combination with any other general or specific teaching regarding insecticides and similar emanators.

Remark 2:

Attached hereto for the Examiner's convenience, relative to the instant remark as well as the following, and consideration, please find a single sheet of drawings showing a comparison of the prior art and the present invention entitled *Comparison of Prior Art with Present Invention* (Exhibit A). Drawings from the prior art are shown in the column on the left-hand side of the page, while drawings showing the present invention are in the right-hand side column. With regard to the drawings of the prior art, it will be

appreciated that the top drawings is from the cited Flashinsky reference while the lower 6 of the drawings show various aspects of the Barnhart device(s). Furthermore, in the right-hand side column, the present invention is shown in the top drawing, the second and third drawings coming down from the top show embodiments of the lower surface of the container of the present invention, and the lower 2 drawings in the right-hand side column show cross-sectional views of embodiments of the container of the present invention. It will be appreciated that the prior art fails to show a container for dispensing volatile insecticidal material in which a lower surface for contacting a heating surface has integral leg support structure to regulate heat transfer from the heating surface to the volatile material.

Remark 3:

*note applicants own spec that indicate
on page 11 lines 7-8*

In response to the Examiner's rejections, Applicant has amended Claims 1 and 10, once amended. In particular, the amendments further render the claims nonobvious. Both Flashinski and Barnhart, U.S. Patent Nos. 6,154,607 and 6,413,476, fail to teach of a container for vaporizing insecticidal material in which a plurality of integrally formed leg structures extend directly between the lower surface of the container and the heating surface of the heating device for regulating the transfer of heat to the insecticide. With all due respect, Applicant submits that the amendment overcomes the Examiner's rejection of the Claims.

*point to col. line in
Flashinski teach a plurality*

Remark 4:

Applicant respectfully requests Examiner withdraw Flashinski, U.S. Patent No. 6,154,607, as an obviating prior art reference. With all due respect, Applicant submits that Flashinski teaches of a table-like top 20 with a compartment 22 for volatile material in which leg structures 31 depend from the outer perimeters of the table top 20. The compartment 22 is distinct from the table top 20. The legs 31 extend from the table top portion 20. With all due respect, the device taught in Flashinski has no lower surface

with integral leg structures which extend directly between a reservoir of insecticide and a heating surface.

With all due respect, the device taught in Flashinski has no heat-regulating surface in direct contact with a heating surface to transmit heat to the insecticide.

① not a limitation
in claim 1

Remark 5:

Applicant respectfully requests Examiner withdraw Barnhart, U.S. Patent No. 6,413,476, as an obviating prior art reference. With all due respect, Applicant submits that Barnhart teaches of a container 3 for heating aromatic substance whose bottom surface is in direct contact with the hot surface. There are no leg portions structurally or physically distinct or separated from the bottom surface. With all due respect, the device taught in Barnhart has no lower surface with integral leg structures which extend directly between a reservoir of insecticide and a heating surface. With all due respect, the device taught in Barnhart has no heat-regulating surface in direct contact with a heating surface to transmit heat to the insecticide.

Remark 6:

In support of the foregoing, Applicant finally and again respectfully submits it is well settled that in order for references to be properly combined, there must be a teaching in at least one of the references to suggest that the disclosure of any of the other references could be modified to produce the Applicant's claimed invention. *ACS Hospital System, Inc. v. Montefiore Hospital et al.*, 221 U.S.P.Q. 929 (Fed. Cir. 1984); *Orthopedic Equip. Co. v. U.S.*, 217 U.S.P.Q. 193 (Fed. Cir. 1983). Additionally, absent some suggestion or incentive, the teachings of references may not be combined. *ACS, supra*, 221 U.S.P.Q. 933, *In re Rinehart*, 531 F. 2d 1048, 189 U.S.P.Q. 143 (C.C.P.A. 1976).

Applying this law to the present situation, it can be seen that there is a glaring lack of teaching in

either Encyclopedia Britannica Online reference, Flashinski or Barnhart to combine either one of these with the other. In fact, as between Flashinski and Barnhart, there is a teaching away from each other.

While Flashinski states that having a flat container in direct contact with a heating surface is undesirable ("It is known in the art . . . to place a volatile material in a pan-like metal structure. These mats and pans were placed on heaters to cause the volatile material to vaporize into the atmosphere." at Col. 1 lines 20-

24; "A problem with such metal pans is that for typical heaters they could cause the volatile material to be exposed to too much heat. This could cause the volatile to be used up too fast or to degenerate . . . at

Col 1, lines 31-34), as Examiner states, "Barnhart discloses a container (3) whose bottom surface is in direct contact with the hot surface (6) in order to regulate the temperature of the volatile material (102) in the container." (See FIG. 5). Thus, Flashinski teaches away from any direct contact between the lower

surface of the container and the heating element, and Barnhart teaches away from using legs to create an air gap between the lower surface of the container and the heating element.

indicating "a problem" is not teaching away. It is an indication of a preference to do it another way.

CONCLUSION
Flashinski does not say it doesn't work only that it could cause it to heat too rapidly.
Applicant respectfully submits that for all the foregoing reasons, the claimed subject matter describes patentable invention. Furthermore, Applicant submits that the specification is adequate and that the claims are in a condition for allowance. No new matter has been entered.

Applicant hereby respectfully requests Examiner to enter these amendments, find them descriptive of useful, novel and non-obvious subject matter, and authorize the issuance of a utility patent for the truly meritorious, deserving invention disclosed and claimed herein.

Without further, Applicant does not intend to waive any claims, arguments or defenses that they may have in response to any official or informal communication, paper, office action, or otherwise, and

they expressly reserve the right to assert any traverse, additional grounds establishing specificity and clarity, enablement, novelty, uniqueness, non-obviousness, or other patentability, etc.

Further, nothing herein shall be construed as establishing indirectly the basis for any prosecution history, file wrapper estoppel, or similar in order to limit or bar any claim of infringement of the invention described herein, either directly or under applicable doctrine of equivalents.

Respectfully submitted,

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By: _____

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CERTIFICATE OF MAILING

I hereby certify that this paper and the documents attached hereto are being deposited in a postage prepaid, sealed envelope with the United States Postal Service using First Class Mail service under 37 CFR 1.98 on the date indicated and is addressed to

"Commissioner of Patents and Trademarks, Washington, D.C. 20231". Signed: Ray K. Shahani Date

Mailed: June 11, 2003

Marked-Up Version(s) of Replacement Paragraph(s)
37 CFR 1.21(b)(1)(iii)

none

Marked-Up Version(s) of Amended Claim(s)
37 CFR 1.21(c)(1)(ii)

1 Claim 1 ([once] twice amended) A system for controlled dispensation of insecticide into an
2 atmosphere, the system comprising:
3 a heat-regulating container having (i) one or more reservoir portions, (ii) a volatile material
4 comprising insecticide to be dispensed into the atmosphere contained within the one or more reservoir
5 portions, and (iii) a lower surface for contacting a heating surface, the lower surface having integral leg
6 support structure to regulate heat transfer from the heating surface to the volatile material; and
7 a heating device with a heating surface [and] adapted to receive the heat-regulating container
8 [such that the integral leg support structure is in direct contact with the hot surface, thereby regulating the
9 temperature of the volatile material in the one or more reservoir portions within the container].

1 Claim 10 ([once] twice amended) A heat-regulating container for dispensing volatile insecticide
2 materials into an atmosphere[, the container adapted] for use in a heating device having a heating surface
3 [at elevated temperature], the container comprising:
4 a reservoir portion for containing [volatile] insecticide [material to be dispensed];
5 a lower surface; and
6 a plurality of integrally formed leg structures extending [from] directly between the lower
7 surface of the container and the heating surface of the heating device for regulating the transfer of heat
8 [from a heating surface of a heating device] to [volatile] the insecticide [material to be dispensed].